

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance
(916) 322-5662

• • Administration • •
322-5660

• • Executive/Legal • •
322-5901

• • Enforcement
322-6441

August 29, 1984

P. Lawrence Klose
City Attorney
City of Davis
23 Russell Blvd.
Davis, CA 95616

Re: Your Request for Advice
Our No. A-84-219

Dear Mr. Klose:

You have requested advice on behalf of City of Davis Design Review Commissioner Paul Hart. The facts which you have provided to us are as follows:

FACTS

As part of their duties, the Design Review Commissioners of the City of Davis review and approve trash container size, location, number and design as well as overall site design layout for refuse collection facilities. A Commission decision could have a considerable impact on the cost-effectiveness of collection and therefore, indirectly, on the income of the Davis Waste Removal Company, the City's exclusive refuse collection contractor. Whether a decision had a "material financial effect" on the Company would depend on the volume of service affected.

A recently appointed Commissioner, Paul Hart, is an officer and 50% shareholder of the Davis Waste Removal Company. He is clearly within the financial interest provisions of Government Code section 87103 (c) and (d).

QUESTIONS

You have posed the following questions:

- 1) Does his position on the Design Review Commission present potential conflict of interest violations by Mr. Hart?
- 2) If so, how should the situation best be addressed?

ANALYSIS

Your letter has stipulated that Commissioner Hart has a financial interest in the Davis Waste Removal Company within the meaning of Government Code Section 87103.^{1/} Therefore, he is required to disqualify himself from making, participating in making, or using his official position to influence any Design Review Commission decision which will have a material financial effect upon the Company. Government Code Sections 87100, 87103; 2 Cal. Adm. Code Section 18702.^{2/} (Copy enclosed.) Consequently, the answer to your first question is yes.

The answer to your second question is found in 2 Cal. Adm. Code Section 18700(b)(5). (Copy enclosed.) This provides the methodology for declaring that he is disqualifying himself from participation in such decisions. It provides as follows:

(b) A public official "makes a governmental decision," except as provided in subsection (d) of this section, when he or she, acting within the authority of his or her office:

* * *

(5) Determines not to act, within the meaning of sub-paragraphs (1), (2), (3) or (4), unless such determination is made because of his or her financial interest. When the determination not to act occurs because of his or her financial interest, the official's determination must be accompanied by disclosure of the financial interest, made part of the agency's official record or made in writing to the

^{1/} Your letter states that he has a financial interest under 87103(c) and (d). However, as a 50% shareholder, he presumably also has a financial interest under Section 87103(a).

^{2/} See specifically subdivisions (b)(1) and (b)(3)(A) and (C).

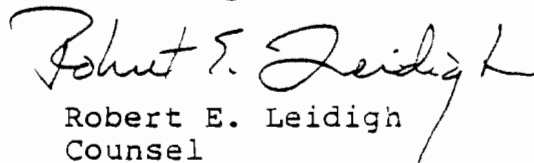
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official's supervisor, appointing power or any other person specified in a conflict of interest code adopted pursuant to Government Code Section 87300. (Emphasis added.)

Whenever Mr. Hart is presented with a Commission decision which he knows (or has reason to know) will have a material financial effect upon his company, then he should immediately take the necessary steps to remove himself entirely from the decision-making process.

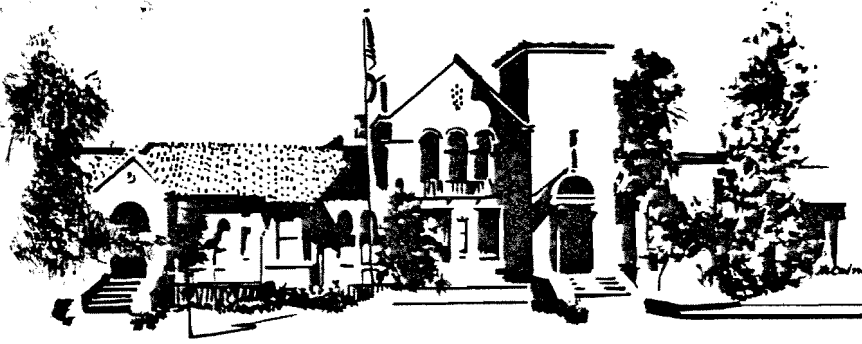
If you have any further questions, please do not hesitate to contact me at (916) 322-5901.

Sincerely,

A handwritten signature in cursive script, reading "Robert E. Leidigh". The signature is written in dark ink and is positioned above the printed name and title.

Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosures

**DEPARTMENTS:**

<input type="checkbox"/> COMMUNITY DEVELOPMENT	916-756-3746
<input type="checkbox"/> FISCAL AND INFORMATION SERVICES	756-3742
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<input type="checkbox"/> PUBLIC WORKS	756-3749

CITY OF DAVIS 23 Russell Blvd. Davis, CA 95616

August 21, 1984

Ms. Barbara A. Milman
Chief Counsel
Fair Political Practices Commission
1100 K Street
Sacramento, CA 95814

Re: Potential Conflict of Interest
Design Review Commission

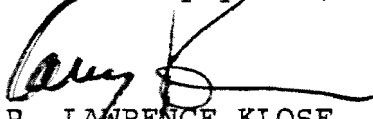
Dear Ms. Milman:

As part of their duties, the Design Review Commissioners of the City of Davis review and approve trash container size, location, number and design as well as overall site design layout for refuse collection facilities. A Commission decision could have a considerable impact on the cost-effectiveness of collection and therefore, indirectly, on the income of the Davis Waste Removal Company, the City's exclusive refuse collection contractor. Whether a decision had a "material financial effect" on the Company would depend on the volume of service affected.

A recently appointed Commissioner, Paul Hart, is an officer and 50% shareholder of the Davis Waste Removal Company. He is clearly within the financial interest provisions of Government Code section 87103 (c) and (d). We would appreciate your response to two questions:

- 1) Does his position on the Design Review Commission present potential conflict of interest violations by Mr. Hart?
- 2) If so, how should the situation best be addressed?

Very truly yours,


P. LAWRENCE KLOSE
City Attorney

PLK:dk

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